A

A KARUNATHAN ARUNASALAM

v.

PENTADBIR TANAH DAERAH PETALING

B

MAHKAMAH TINGGI, SHAH ALAM
ZALEHA ZAHARI J
[APPLICATION CIVIL NO: MT3-15-122-1999]
10 OCTOBER 2006

C ***LAND LAW:*** *Acquisition of land - Compensation - Adequacy of - Determination - Material date for assessment of market value of subject property - Injurious affection - Whether compensation awarded for 'injurious affection' - Whether subject property valued as land with industrial potential - Calculation of market value and injurious affection -*
D *Land Acquisition Act 1960, ss. 40A(2) and 40D*

The applicants herein each own 1/5 share of land known as Lot 14225 HS(D) 32816 Mukim Petaling, District of Kuala Lumpur ('the said land'). A part of said land ('the subject property') was
E acquired for the purpose of a road project known as 'Projek Lebuhraya Damansara Puchong' ('Project LDP') *vide* Selangor Gazette Notification No. 863.96 published on 26 September 1996 arising from which acquisition the applicants were offered compensation in the sum of RM156,722.38. The applicants had
F earlier filed a joint Form N dated 18 August 1998. According to the Form N filed, acceptance of the compensation awarded to them by the land administrator was made under protest in respect of the sufficiency thereof. The objection to which this court was convened to determine was with regard to the amount of
G compensation payable to the applicants. Pursuant to s. 40A(2) of the Land Acquisition Act 1960 ('the Act'), two assessors were duly appointed to aid this court in determining the objections raised in the Form N in issue and in arriving at a fair and reasonable amount of compensation. According to the applicants'
H valuer, the amount of compensation payable to the applicants' due to severance and affection pursuant to para. 2(c) and (d) of the First Schedule of the Act was RM4,190,000. The applicants' counsel further submitted that the report of the respondent's valuer lacked credibility and should accordingly be rejected by the
I court. The respondent's counsel, however, submitted that as the applicants' valuation report had been premised on the wrong date for valuation, the wrong category of land use of the same land, as

well as based on the wrong comparables, the applicants' claim for a higher compensation from that awarded by the land administrator should be dismissed. The issues that arose were (1) the material date for assessment of the market value of the subject property; (2) value of the subject property as at 26 September 1996; (3) calculation of market value.

Held:

(1) Differential dates to assess the market value of the subject property have been adopted by the applicants and the respondent. On the part of the applicants, they have held out a valuation of the subject property as at 2 May 1997, whilst the respondent have held out a valuation as at 26 September 1996. Applying para. 1(1)(b) of First Schedule of the Act to this case, the material date for ascertainment of the market value of the subject property was the date of publication of the notification in the Gazette under s. 4 (*ie*, 26 September 1996) and not the date when the applicants were served with Form E (*ie*, 2 May 1997). (paras 47 & 49)

(2) In assessing the market value of the subject property, the assessors were of the view that the omission to describe exactly the scheduled portion does not have any impact on the valuation of the land. No error was committed by both valuers, the applicants' valuer as well as the respondents' valuer, in the site inspection, the description of the land and its ownership. (para 2)

(3) The applicants' valuer's report failed to mention whether the zoning plan was verified or checked with the relevant authority. The applicants' valuer's report was also misleading by stating that the land was approved for 'commercial' development. An assumption was made by the applicants based on the approval by the local authority for the extension of the shops on the land. An additional premium paid to the local authority was for the purpose of assessment for services provided by them, and not an endorsement of a title change in the category of land use. (paras 53 & 54)

(4) On the comparisons chosen by the respondent's valuer, the assessors were of the opinion that they were relevant as a basis for comparison in ascertaining the value of the subject land. As to the comparisons chosen by the applicant's valuer

in assessing the value of the land, they were of the opinion that the comparisons held out were inaccurate as it reflected commercial use of a specialized nature. The assessors were of the view that necessary adjustments had to be made to the best evidence of sale that was most comparable to the subject property. (paras 57 & 58)

(5) On the question of injurious affection to the First Schedule 2(d) of the Act and Rules, the assessors took note of the fact that, prior to acquisition, the said land enjoyed a wide frontage, but after the construction of the LDP, Lot 14225 only had a narrow access through a slip road. After the acquisition, access to the said land was restricted as there was a reduced width of remaining land fronting on to the road. The assessors were therefore of the opinion that compensation should be awarded for 'injurious affection.' The amount recommended by the applicant's valuer on a loss in value to the remaining land at 50% (using the before and after method) was high in quantum and inaccurate in basis (reflecting commercial land value). The subject property should be valued as land with industrial potential and that compensation for injurious affection of the said land should be based on a quantum of 10% loss in value as the injury only related to a reduced width of road frontage. (paras 59 & 60)

(6) The court was bound under s. 40D of the Act to accept the joint opinion of the two assessors. It was accordingly ordered that the land administrator pay an excess compensation to the applicant as follows: (a) market value of subject property acquired RM195,900 and (b) injurious affection (IA) RM167,489. The amount of compensation RM363,389 to be divided amongst the applicants in accordance with the registered ownership. The excess awarded shall bear interest at the rate of 8% p.a from the date in which the land administrator took possession to the date of payment of such excess to each of the applicants. (paras 62 & 63)

[Order accordingly; costs of proceedings to the applicants.]

Case(s) referred to:

Aminah Abas v. Pentadbir Tanah Daerah Kuantan [2004] 5 CLJ 1 HC ***(refd)***

Pentadbir Tanah Daerah Petaling v. Swee Lin Sdn Bhd [1999] 3 CLJ 577 CA ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 8, 38(2), 40A(2), 40D(1)
National Land Code, s. 124

For the applicant - Dato Rajasingam (Kirubakaran & Cik Pala with him); M/s Syarikat Radhakrishnan
For the respondent - Aida Adha Abu Bakar (Aimee Liew with her)

Reported by Suhainah Wahiduddin

JUDGMENT

Zaleha Zahari J:

[1] Unless expressly stated references in this judgment to any legal provisions shall refer to the Land Acquisition Act 1960 and reference to any Form refers to the Form prescribed in the Schedule to that Act.

Background

[2] The applicants in this case, A. Karunathan a/l Arunasalam, Rajamanickkam w/o Arunachalam Pillai (as trustee), Kannathasan a/l Arunasalam, Tirughana Sambandan a/l Arunasalam and Porpadam @ Porpatham a/l Arunasalam each own 1/5 share of land known as Lot 14225 HS(D) 32816 Mukim Petaling, District of Kuala Lumpur ("the said land"). A part of said land ("the subject property") was acquired for the purpose of a road project known as "Projek Lebuhraya Damansara Puchong ("Project LDP") *vide* Selangor Gazette Notification No. 863/96 published on 26 September 1996 arising from which acquisition the applicants were offered compensation in the sum of RM156,722.38.

Previous Court Proceedings/Applications

[3] There have been earlier court proceedings between the parties in this land reference prior to its registration in the Shah Alam High Court consequential upon the Petaling Land

A Administrator referring the applicants' joint objection in Form N dated 18 August 1998 (Lampiran 'C', encl. (1)). It is necessary to set out the outcome of these earlier proceedings in view of the arguments raised by the applicants' counsel in their written submissions at the conclusion of hearing of this land reference.

B

(a) Kuala Lumpur High Court High Civil Suit No: S2-21-11-98

[4] On 3 February 1998 the applicants filed Kuala Lumpur High Court Civil Suit No. S2-21-11-98 (exh. "TS3" encl. (10), "the KL suit") by which suit the applicants' sought for a declaration that C the land acquisition (which is also the subject matter of this land reference) is invalid and that it be declared null and void.

[5] In April 1998 a consent order was recorded between the parties to this KL suit. According to this order parties had agreed D that the applicants be granted an extension of time to file their Form N conditional upon the applicants withdrawing the KL suit.

(b) Shah Alam High Court Originating Summons No: MT1-21-66-1998

E **[6]** The applicants then filed Shah Alam Originating Summons No: MT 1-21-66-98 (the "Shah Alam OS"). By this Shah Alam OS the applicants sought for an extension of time to file their objection in Form N in respect of the compensation awarded to them for acquisition of the subject property.

F **[7]** A consent order was also recorded between the parties in the Shah Alam OS on 10 August 1998 before the Honorable Justice Dato' Faiza b. Haji Tambi Chik. According to this consent order the applicants were given liberty and granted an extension of time to file their objection in Form N against the compensation G awarded and that costs be in the cause.

The Applicants' Objections In Form N

[8] The applicants then filed a joint Form N dated 18 August 1998. According to the Form N filed, acceptance of the H compensation awarded to them by the Land Administrator was made under protest in respect of the sufficiency thereof. In para 2 of their Form N, the applicants stated their interest, whilst in para 3, they then set out the nature of their objection. The I applicants relied on para 3(a) and (b) of the Form N (ie, in relation to the measurement of the land and amount of

compensation). In para 4 of Form N, the applicants had then set out in detail the grounds upon which objection to the award was taken. For ease of reference the grounds are reproduced. It reads as follows:

> 4. Alasan-alasan bantahan saya adalah seperti berikut:
>
> a) Pampasan *'ex-parte'* yang ditawarkan adalah tidak mengambil kira kesemua kepentingan dan kerugian;
>
> b) Jumlah pampasan kurang daripada jumlah kutipan sewa dalam satu tahun, manakala pemilik-pemilik tanah yang lain telah diberi pampasan penjejasan (selain dari pampasan tanah & bangunan) iaitu kutipan sewa yang lebih dari sepuloh tahun;
>
> c) Pemilik lot 35443 & 35444 telah ditawarkan nilai pasaran yang sama untuk tanah (jalan yang sedia ada) di mana cukai tanah yang dibayarnya adalah 5 sen per se-meter manakala kami membayar RM1.80 per se-meter (36 kali lebih);
>
> d) Kami telah kehilangan 2 penyewa utama (RM22,000 sebulan) di atas baki tanah yang sedia ada disebabkan kesan-kesan negative pengambilan tanah;
>
> e) Pampasan tidak mengambil kira penjejasan (injuries affection) bagi pembangunan masa hadapan yang 'uneconomic' ke atas baki tanah kami;
>
> f) Pengambilan tanah adalah atas pilihan dan bukannya keperluan.

[9] The applicants' Form N was then forwarded by the Petaling Land Administrator to the registrar of the Shah Alam High Court in Form O dated 21 June 1999. Consequential upon this reference, this land reference was duly registered at the Shah Alam High Court.

[10] Pausing here for a moment, the objection which this court was convened to determine at the hearing date is with regard to the amount of compensation payable to the applicants. Pursuant to s. 40 A(2) of the Act, two assessors were duly appointed, Ms K. Petsy John, a valuation officer employed by the Government, and the other, Encik Bock Chek Hoi, to aid this court in determining the objections raised in the Form N in issue and in arriving at a fair and reasonable amount of compensation.

A **[11]** The applicant in their written submissions at the conclusion of hearing of this land reference took issue with the validity of the whole acquisition and contended that this court has no jurisdiction to hear this land reference. It is therefore necessary to deal with this issue first.

B

Jurisdiction Of This Court To Hear This Land Reference

[12] At the commencement of hearing of this land reference when this court was already sitting with assessors, there was an attempt by the applicant's counsel to raise a preliminary objection upon C the respondent's counsel objecting and informing the court that no notice was given by the applicant's counsel of their intention to do so, the court upheld the respondent counsel's objection. The applicants' counsel was not allowed to raise any preliminary objection by reason of the failure to give the requisite notice. D

[13] The applicants' counsel was then directed to present their case confined to the issues raised in the applicants' Form N as provided by s. 38(2) of the Act. This provision provides that at any hearing in court, no other grounds shall be given in argument, E without the leave of the court.

[14] Notwitstanding this earlier decision of the court disallowing the applicant's counsel from raising any preliminary objection, in their written submissions at the conclusion of hearing, the F applicants' counsel did not confine himself to the grounds raised in the applicants' Form N. This court was invited not to confine itself to the issues raised in the Form N in relation to measurement of land and the amount of compensation. The court was urged to review its earlier ruling in not allowing the applicants' G counsel to raise a preliminary objection. The validity of the acquisition by the Land Administrator Petaling in conducting the inquiry which he did on 31 January 1997 was questioned, as well as this court's jurisdiction in hearing this land reference.

H **[15]** My findings on these points are these. The applicants' earlier challenge of the whole acquisition proceedings of the subject property *vide* the KL suit for a declaratory order has since been withdrawn by the recording of a consent order. Thereafter, there is then the application *vide* the Shah Alam OS for extension of I time for the applicants to file an objection in Form N, which application was also allowed by the court by way of a consent order. This was followed by the filing of the applicants' joint Form

N, which objection was then referred by the Land Administrator to the Shah Alam High Court, and this land reference duly registered.

[16] Having regard to these events that had transpired, it is quite clear that to permit the applicants to again challenge the validity of the whole acquisition proceedings and this court's jurisdiction in proceeding with the hearing of this land reference would be giving the applicants another bite at the cherry. The applicants cannot approbate and reprobate. They are bound to abide by the consent orders recorded in the earlier court proceedings. Having filed their Form N well out of time frame provided by the law pursuant to all of the consent orders which had been recorded, arising from which the applicants were before this court by way of an appeal provided by the relevant law, the issues for determination by this court in this land reference must necessarily be confined to that held out in their Form N (ie, measurement of the land and the amount of compensation) and nothing more. The applicants, by their conduct, is estopped from challenging the validity of the acquisition as well as questioning this court's jurisdiction to determine their objections which has been referred to it for consideration and determination.

[17] Further, even if this court were to entertain the challenges raised, it is my finding that the applicants' contention on this issue is devoid of merit and substance. Accepting the fact that Selangor Gazette Notification No. 863/96 as initially published on 26 September 1996 has not accurately specified the "Mukim" under which the subject property falls under, this omission has been duly corrected by the amendment made by Selangor Gazette Notification No. 1043/96 published on 7 November 1996 (ie, Item (iv)), by the insertion of a heading "Daerah/District – Petaling – Mukim – Petaling" between reference to lot "899" and "PT 33948". I hold that the omission to insert as a heading the "Mukim" under which the respective lands falls under, does not, affect the validity of the acquisition of the subject property for the LDP Project in any way.

[18] I will now deal with the issues raised in this land reference on its merits.

A **The Applicants' Case**

[19] The applicants' case was extremely brief. Counsel for the applicants informed the court that he was not calling any witness. The applicants rests their case on encl. (1), the valuation of Right B Angle Property Consultant dated 3 April 1999 (encls. (4)), as well as encls. (9), (10), (11), (14) and (17). He then closed the applicants' case.

[20] The applicants' counsel took the position that he was not C obliged to secure the attendance of any of the deponents of the affidavits that the applicants' were relying on, in particular, in respect of the valuation report given by their valuer, Right Angle Property Consultant dated 4 April 1999 (encl. (4)). The applicants' valuer was not present in court that day for cross-D examination as no notice had been issued by the respondent counsel under para 5(6) of the Third Schedule of the Act to make the deponents of the applicants available for cross-examination.

The Applicants' VaIuation

E **[21]** The applicants' valuer's report states that the subject property is located in the "Mukim of Petaling, District of Petaling". The position taken by the applicant's valuer was that the subject property was not listed as one of the scheduled lands to be partly acquired under Selangor Gazette Notification No. 863/1996. In F para 5 of the report, the date of valuation to determine the market value of the subject property was 2 May 1997.

[22] Based on the comparisons stated in para 14.00 of the report, the adjustments described in para 15, in para 16.00, the G applicants' valuer assessed the market value of the land acquired of 728 sq meter (7876 psf) at the rate of RM1,614.60 sq. meter (RM150 psf). The applicants' valuer then assessed the market value of the subject property as at 2 May 1997 to be in the sum of RM1,170,000 and was of the opinion that this sum is payable H to the applicants as compensation.

[23] The applicants' valuer was further of the opinion that due to the compulsory acquisition, the retained land has depreciated in value on the grounds set out in para 17.00 B) of the report for the reasons and factors set out in sub-paragraphs 1 to 5). I According to the applicants' valuer the market value of the land before compulsory acquisition was RM1614.60 psm (RM150 psf)

and the market value after acquisition was RM076.40 psm (100 psf) and that there was a loss in value of RM538.20 psm (RM50 psf).

[24] The applicants' valuer then concluded that the amount of compensation payable to the applicants' due to severance and affection pursuant to para 2(c) and (d) of the First Schedule of the Act was RM4,190,000.

The Applicant's Counsel's Submissions

[25] The applicants' counsel highlighted the fact that the applicants became aware that their land was being acquired for the LDP project only upon service of Form E on them ie, on 2 May 1997. Upon receipt of Form E, the applicant lodged their objection and took the position that the declaration under s. 8, Selangor Gazette Notification *vide* No. 863/96, was null and void and of no effect. The applicants did not attend the inquiry before the Land Administrator Petaling when it commenced, nor at any of the subsequent/continued hearing dates.

[26] According to the applicants counsel, the respondent's valuer had erred in valuing the subject property as "residential with potential for industrial use". The applicants contended that the subject property fell within the category of "commercial". He submitted that the respondent's valuer had not carried out a factual search of the subject property's history and status with the various Government Agencies before compiling the report which he did. The applicant's counsel was of the view that the respondent's valuer had:

(a) ignored the approval granted by the Majlis Daerah Petaling for alteration and addition to the shops then existing on 31 May 1977 *vide* letter reference Bil (8) dlm MDP 102/77;

(b) not taken into consideration the factor that the said land was a "commercial" holding for the following reasons:

(i) The payment of additional premium of RM275,002 on 29 June 1998 which sum the applicants' were not in law obliged to pay and necessary steps are being taken to obtain a refund;

(ii) failed to assess the permanent buildings that were affected by the said acquisition;

A (iii) when assessing the market value, in taking into consideration the stamp duty valuation instead of the actual consideration for the comparables.

[27] The applicants' counsel submitted that the report of the B respondent's valuer and oral evidence in support thereof, lacked credibility and should accordingly he rejected by this court.

The Respondent's Case

[28] The report of the respondent's valuer in rebuttal is that C dated 29 November 1996 (encl. (5)). The respondent's valuer, Rafee bin Jaafar (RS1), was called to testify and offered for cross-examination notwithstanding the absence of a notice by the applicants that he be made available for cross-examination pursuant to para. 5(6) of the Third Schedule.

D

[29] In assessing the market value of the subject property, RSI took the date of publication of Selangor Gazette Notification No. 863/96 (26 September 1996) under s. 8 of the Act as the material date for assessment. RS1 testified that a few buildings were E involved in this acquisition, which buildings were situated between the said land and the reserve land.

[30] RS1 stated that he visited the said land on 10 November 1996 shortly after the gazette notification of 26 September 1996. He obtained the particulars of title at the Petaling Land Office as F at 26 September 1996, set out the location of the said land and its surrounding neighbourhood. He also checked the plans for development and noted that the said land was zoned for industry.

[31] He adopted the comparison method of valuation to G determine the market value of the said land, ie, a consideration of the prices of sales of similar lands in in the neighborhood or locality and of similar quality and positions. He based his valuation on the transactions referred to in para 12.0 and considered the factors described in para 13.1, 13.2, 13.3 of the report.

H

[32] RS1 valued the subject property as "residential" with potential for "industrial" use. On potential development, RS1 was of the view that the potential for development was remote due to excess developed units within the vicinity.

I

[33] He was of the view that the market value of the subject property as at 26 September 1996 was RM20 psf and compensation payable to the applicants was therefore 7836,192 sf x RM20 psf ie RM156,725.

The Respondent's Counsel's Submissions

[34] She submitted that the date of 2 May 1997 taken for assessing the market value of the said land by the applicants valuer was incorrect and contrary to para 1 of the First Schedule which specifically provides that the term "market value" shall mean the market value of such land at the date of the publication in the Gazette of the declaration made under s. 8 (ie, 26 September 1996). The use of the word "shall" means that it is mandatory and must be strictly adhered *Aminah bte Aras v. Pentadbir Tanah Daerah Kuantan* [2003] 4 MLJ 669. The material date to ascertain the market value of the said land is therefore the date of publication in the Gazette which is 26 September 1996.

[35] She submitted the applicants' counsels submissions that RS1 had overlooked the category of land use as "building" was misleading and taken out of context. RS1 had testified that by reason of none of the specified categories on the title of the said land (P1), ie, "Agriculture/Building/lndustry" having been cancelled, he interpreted this to mean that the category of land use was 'Nil'. Be that as it may, notwitstanding the category of land use being considered as 'Nil', RS1 had nevertheless valued the said land as "residential" with potential for "industrial".

[36] Section 124 of the National Land Code 1965 stipulates that where the State Authority approves any application for alteration of any category of land use, it shall direct that cateqory of land use be endorsed on the document of title to the land, and from the date the direction is carried into effect, the land shall be according to the category of land use so endorsed. Any direction may be made conditional upon the payment of further premium and the reservation of a new rent. The category of land use becomes 'Building' only after the title is endorsed, which on the facts of this case is after 29 June 1998.

[37] She highlighted the fact that the change in the category of land use to 'Building' was only effected twenty-one months after the date of the gazette and that the applicants were fully cognizant of this fact. The supplementary affidavit affirmed by

Tirughana Sambandan a/l Arunasalam on 22 December 2000 has held out a copy of the "bayaran premium tambahan bagi tukar syarat tanah kepada bangunan hakmilik HS(D) 38216 PT14225 Mukim Petaling" (exh. "TS9 encl. (10)). The deponent at para. 14 of his affidavit averred that the premium was paid on 29 June 1998. This goes to show that, prior to 29 June 1998, the category of land use was not 'building'. Only after the payment of additional premium did the category of land use change to 'Building'.

[38] On the alteration and addition to the shops alleged to have existing on 31 May 1977, there is no evidence whether the buildings on the said land at the material date of valuation are the same buildings on 31 May 1977. In any event RS1 had at para 8 of his valuation reported stated that:

> terdapat beberapa bangunan terlibat dengan pengambilan. Bangunan ini adalah terletak di antara rezab jalan dan lot berkenaan. Jenis bangunan adalah sementara.

[39] In *Pentadbir Tanah Daerah Petaling v. Swee Lin Sdn Bhd* [1999] 3 MLJ 489 the Court Appeal held that a building built on a road reserve is an unlawful act and compensation can be awarded for a building built unlawfully upon land that is being acquired.

[40] The respondent counsel submitted that the evidences of value set out by RS1 as specified in para 12 of his valuation report encl (5) were properties with similar characteristics as the said land (ie, land for industry) situated within the same vicinity. The transactions of the comparables were carried out around the time of the Gazette date of 26 September 1996. She submitted that as the respondent's valuation was unrebutted by any evidence, the valuation of RS1 of the said land should accordingly be accepted by this court.

[41] She submitted that the applicants' valuation report (encl. (4)), and the affidavit in reply affirmed on 22 December 2000 by the applicants' valuer (encl. (9)) and the applicant's supplementary valuation report (exh. "TS11" at encl. (10) should not be accepted and should be rejected by this court.

[42] The evidence relating to the valution of the two (2) pieces land made by the applicants valuer, as contrasted with the five (5) made by the Government's Valuer, were petrol station site and the said land is not a petrol station site. The comparables of the applicants' valuer are not similar properties as the said land. They are also smaller in size.

[43] It was also submitted that there is no damage for severance as what was acquired was a strip of land facing the Lebuhraya Damansara Puchong and the acquisition did not sever the applicants' land from his other land. There is also no damage for injurious affection as there is now better access into and out of the applicants' land. The remaining area is still large (83,774 sq ft compared with the original area of 91,611 sq ft as only 7,736 sq ft was acquired). She submitted that due to the LDP, the applicants' access has improved. In this regard, with regard to the figures in the affidavits affirmed by Oon Kam Lam on 20 February 2002 (encl. (13)) shows that the acquisition had in fact brought improvement to the applicants' remaining land.

[44] She submitted that the category of land use is agriculture at the material date of valuation of 26 September 1996. This is confirmed that by the fact the conversion premium was paid only on 29 June 1998, one year nine months later. Thus the respondent's valuer in recommending RM20 psf for "use for residential with potential for industrial", has erred on the side of generosity.

[45] The respondent's counsel concluded by saying that as the applicants' valuation report has been premised on the wrong date for valuation, the wrong category of land use of the said land, as well as based on the wrong comparable the applicants' claim for a higher compensation from that awarded by the Land Administrator should be dismissed with costs.

Findings

[46] After careful consideration of the evidence, the submissions of counsels and taking into consideration the opinion of the assessors sitting with me, my findings on the for determination and conclusion are as follows:

What Is The Material Date For Assessment Of The Market Value Of The Subject Property?

[47] Differential dates to assess the market value of the subject property have been adopted by the applicants and the respondent. On the part of the applicants, they have held out valuation of the subject property as at 2 May 1997, whilst the respondent's have held out a valuation as at 26 September 1996.

[48] On this issue para 1, First Schedule of the Act provides that:

(1) Far the purposes of this Act the term "market value where applied to any scheduled land shall mean the market value of such land:

(a) At the date of publication in the Gazette of the notification under s. 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under s. 8 in respect of all or some part of the land in the locality specified; or

(b) In other cases, the date of the publication in the Gazette of the declaration made under s. 8.

[49] Applying para 1(1)(b) of First Schedule to this case, the material date for ascertainment of the market value of the subject property is the date of publication of the notification in the Gazette under s. 4 (ie, 26 September 1996), and not the date when the applicants were served with Form E (ie, 2 May 1997).

Value Of The Subject Property As At 26 September 1996

[50] Paragraph 2(1) of the Third Schedule of the Act provides that the applicant's valuer report alone must establish a *prima facie* case for the applicants. On the facts of this case the applicant's valuer has not given any opinion as to the value of the subject property as at 26 September 1996. Be that as it may, it is still incumbent upon this court under s. 40D(1) of the Act to consider the amount of compensation payable or as to the amount of any of its items with the aid of the two assessors sitting with me.

[51] I have before me the joint opinion of the two assesors, Puan K. Petsy John and that of Encik Bock Chek Hai as to the fair and reasonable amount of compensation payable to the applicants which I am bound by law to accept.

[52] In their report, in assessing the market value of the subject property, the assessors were of the view that the omission to describe exactly the scheduled portion does not have any impact on the valuation of the land. They noted that no error was committed by both valuers, the applicants' valuer as well as the respondent's valuer, in the site inspection, the description of the land and its ownership.

[53] The assessors also took note of the fact that the applicants' valuer's report failed to mention wether the zoning plan was verified or checked with the relevant authority and that the applicants' valuer's report was misleading by stating that the land was approved for "commercial" development. An assumption was made by the applicants based on the approval by the local authority for the extension of the shops on the land.

[54] As to payment of additional premium, the assessors were of the view that this fact could not be verified as no oral evidence was given. In addition, in their expert opinion, an additional premium paid to the local authority is for the purpose of assessment for services provided by them, and not an endorsement of a title change in the category of land use.

[55] As to the report of the respondent's valuer stating that the application to develop the land for commercial use was not obtained, they noted that the date the search was made was not mentioned in the report. The respondent's report, however states that according to the structure plan, the lot is zoned for "industrial" use. Again no verification or documents were attached to support this claim.

[56] The assessors were of the opinion that a normal procedure in the valuation for acquisition by any Government valuer would include a detailed check with the planning authority against the structure plan. Therefore the basis of valuation should be land with potential for industrial use.

[57] On the comparisons chosen by the respondent's valuer, the assessors were of the opinion that they were relevant as a basis for comparison in ascertaining the value of subject land. As to the comparisons chosen by the applicant's valuer in assessing the value of the land, they were of the opinion that the comparisons held out were inaccurate as it reflected commercial use of a specialized nature (that is petrol station).

[58] The assessors were of the view that necessary adjustments has to be made to the best evidence of sale that was most comparable to the subject property

[59] On the question of injurious affection to the First Schedule 2(d) of the Act and Rules, the asssessors took note of the fact that, prior to the acquisition the said land enjoyed a wide frontage, but after the construction of the LDP, Lot 14225 only had a narrow access through a slip road. After the acquisition, access to the said land is restricted as there is a reduced width of remaining land fronting on to the road.

[60] The assessors were therefore of the opinion that compensation should be awarded for "injurious affection". Be that as it may, the assessors were of the view that the amount recommended by the applicant's valuer on a loss in value to the remaining land at 50% (using the before and after method) was high in quantum and inaccurate in basis (reflecting commercial land value). The assessors were of the opinion that the subject property should be valued as land with industrial potential and that compensation for injurious affection of the said land should be based on a quantum of 10% loss in value as the injury only relates to a reduced width of road frontage.

[61] Based on their analysis, after making adjustments for size, location, shape and category of land use, the assessors were of the opinion that the reasonable compensation payable to the applicants were as follows. The assessors were of the opinion that the market value of the subject property was RM25 psf calculated as follows:

A) Calculation of Market Value

From the sale of Lof 32335	Base	RM22.36 psf
Add		
– Size		
Size of subjet property	- 2.1045 acres	
Comparable	- 8.51 acres	
	+ 20%	
– Location		
Location of subject property is better near to Pekan Puchong	+ 20%	

Less

– Shape

Subject property is triangular in shape but frontage is wide - 10%

– Category of Land use

Subject property	– Nil	
Comparable	– industrial	
	- 30%	
	+ 10	1.10
		24.60

Say RM25.00 per sq. ft.

B. Calculation Of Injurious Affection (1A)

Before Acquisition

91,578,36kp @ RM25/kp = 2,289,459.00

After Acquisition

83,742.17kp @ RM23/kp = - 1,926,069.91

363,389,09

Subject Property - 195,900.00

1A 167,489.09

Summary

a. Market value of subject property acquired	RM 195,900
b. Injurious Affection (1A)	RM 167,489
Amount of Compensation	RM 363,389

Conclusion

[62] This court is bound under s. 40D of the Act to accept the joint opinion of the two assessors.

[63] It is accordingly ordered that the Land Administrator shall pay an excess compensation to the applicants as follows:

A

a. Market value of subject property acquired	RM 195,900
b. Injurious Affection (1A)	RM 167,489
Amount of Compensation	RM 363,389

B

to be divided amongst the applicants' in accordance with the registered ownership. The excess awarded shall bear interest at the rate of 8% p.a from the date on which the Land Administrator took possession to the date of payment of such excess to each of the applicants'. The costs of these proceedings to the applicants'.

C

D

E

F

G

H

I